

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

PHILIP SIMS,

Plaintiff,

vs.

PROGRESSIVE DIRECT
INSURANCE COMPANY,

SERVE: Missouri Director of Insurance
301 W. High St., Room 630
Jefferson City, MO 65101

Defendant.

CAUSE NO.: 0922-008264

DIVISION NO. 1

JURY TRIAL REQUESTED

**PETITION - PERSONAL INJURY - VEHICULAR
UNDERINSURED MOTORIST**

COMES NOW Plaintiff PHILIP SIMS and for his cause of action against
the above-named Defendant PROGRESSIVE DIRECT INSURANCE
COMPANY, states as follows:

1. At all times relevant herein, North Outer Road and Heritage Crossing were public thoroughfares in St. Charles County, Missouri, with North Outer Road running in a generally northerly and southerly direction, and Heritage Crossing running in a generally easterly and westerly direction.
2. On or about January 13, 2008, Plaintiff Philip Sims was operating his motor vehicle in a northerly direction on North Outer Road at or near its intersection with Heritage Crossing, when and where a vehicle

which was being driven by one Larry Dean Joiner Jr. did negligently and carelessly collide with the rear end of Plaintiff's vehicle.

3. Said collision was directly and proximately caused by the negligence, inattention and careless operation of Larry Dean Joiner Jr.'s vehicle in the following particulars, to-wit:

- A. Larry Dean Joiner Jr. failed to keep a careful lookout;
- B. Larry Dean Joiner Jr. failed to yield the right of way.
- C. Larry Dean Joiner Jr. operated his vehicle at an excessive speed under the circumstances then and there existing;
- D. Larry Dean Joiner Jr. failed to stop, slow or swerve his vehicle so as to avoid the collision;
- E. Larry Dean Joiner Jr. drove his vehicle while intoxicated to the extent that his driving ability was impaired;
- F. Larry Dean Joiner Jr. followed Plaintiff's vehicle too closely.

4. As a direct and proximate result of the negligence, carelessness and inattention of Larry Dean Joiner Jr., Plaintiff Philip Sims was caused to sustain personal injuries in the form of fractures in his cervical spine and soft tissue injuries to his neck, shoulders, and back; Plaintiff sustained a concussion which caused him to suffer from periods of nausea, headaches, and light sensitivity; Plaintiff sustained lacerations on

his head, an abrasion on his head, and he sustained contusions on his left cheek bone and right jaw; the aforesaid injuries to the spine will cause Plaintiff to develop an early onset of arthritis in the affected areas; Plaintiff has lost and will in the future continue to lose his natural rest and sleep; Plaintiff's injuries as aforesaid are painful, permanent and progressive; Plaintiff has incurred substantial medical treatment, care and expense in the approximate amount of Eleven Thousand Dollars (\$11,000.00), and he will in the future be caused to incur further medical treatment, care and expense, the full extent of which cannot be ascertained at this time; Plaintiff has been caused to incur a substantial loss of wages from his employment in a presently unknown amount, and he will in the future be caused to incur an additional unknown amount of lost wages; Plaintiff's present and future ability to work and carry out normal daily activities has been impaired, all to Plaintiff's damage.

5. Plaintiff's claimed damages are in excess of the jurisdictional limits set in the Associate Circuit Court for the State of Missouri.

6. Plaintiff filed a previous claim against Larry Dean Joiner Jr. and has settled with his insurance carrier for his policy limits.

7. On or about January 13, 2008, Plaintiff had a policy of insurance; namely, Policy No. 10903032-1 in full force and effect with Defendant PROGRESSIVE DIRECT INSURANCE COMPANY, hereinafter referred to as "Defendant PROGRESSIVE", with respect to a 2003

Honda Civic automobile, and said policy contained underinsured motorist coverage provisions.

8. Said Defendant insurance company is a foreign insurance company authorized to do business in Missouri, and said Defendant has offices in the City of St. Louis and writes automobile insurance policies in the City of St. Louis.

9. Said policies provided that Defendant would pay its insured damages for bodily injury which its insured is legally entitled to recover for damages from the owner or operator of an underinsured motorist vehicle because of bodily injury sustained by the insured and caused by an accident arising out of the ownership, maintenance or use of such underinsured motor vehicle.

10. Plaintiff Philip Sims is and was at all times relevant herein, a named insured under the aforesaid policy with Defendant.

11. Plaintiff Philip Sims has fully complied with all conditions precedent to recovery on said policy, as set forth in said policies.

12. At all times relevant herein, LARRY DEAN JOINER JR., was covered with respect to the subject collision by a bodily injury liability policy whose limits for bodily injury liability were less than the limits of underinsured motorist coverage under the policies with this Defendant, and this Plaintiff's damages have exceeded the limits for bodily injury liability with respect to the policy for Larry Dean Joiner Jr., and thus Larry Dean

Joiner Jr., was therefore an underinsured motorist; accordingly, Plaintiff filed a previous claim against Larry Dean Joiner Jr. and has settled with his insurance carrier for her policy limits.

13. Plaintiff is hereby making an underinsured motorist claim against this Defendant.

14. Missouri House Bill 393 and Senate Bill 420 are unconstitutional and should not be applied to this lawsuit; more specifically, Rs. Mo. 490.715, Rs. Mo. 408.040, and Rs. Mo. 537.067 are unconstitutional and should not be applied to this lawsuit.

15. On May 21, 2009, Plaintiff sent a certified demand letter to Defendant, which letter was received on May 22, 2009, and said certified demand was for One Hundred Fifty Thousand Dollars (\$150,000.00) for Plaintiff's claim.

16. On or about July 2, 2009, Plaintiff received a verbal offer from Defendant for a lesser amount. Pursuant to Mo.Rev.Stat. §408.040, prejudgment interest would begin to run as of July 2, 2009, assuming that Plaintiff receives a verdict which is in excess of his certified demand figure.

WHEREFORE, Plaintiff PHILIP SIMS prays judgment against Defendant PROGRESSIVE for such damages as are fair and reasonable for his personal injuries; for prejudgment interest running from July 2, 2009; for his costs herein incurred and expended; and for such other orders as this Court deems just under the circumstances.

ROBERT J. ALBAIR, P.C.



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